

Representation of parents and guardians in child welfare cases is a mandated service pursuant to Legal Aid Alberta's Governance Agreement and is a priority area for Legal Aid Alberta (hereinafter referred to as "LAA") staff offices, where we have a specialized team of lawyers who have training and expertise in child protection matters.

Background:

Even though only 1 in 10 children in Alberta is of Indigenous heritage, these children make up almost 70% of those in the child welfare system. This overrepresentation of Indigenous children in care remains consistent, and Alberta's is among the highest in Canada.

The over representation began long ago, accelerated in the 1960s with the Sixties Scoop, and has become more pronounced in recent decades. Despite media attention and numerous reports, including the Truth and Reconciliation Commission and its Calls to Action (specifically, #30 on reducing overrepresentation and #57 on education), the United Nations Declaration on the Rights of Indigenous Peoples, and the Office of the Child and Youth Advocate's Special Report in 2016 and the coming into force and effect of *An Act Respecting First Nations, Inuit and Metis Children, Youth and Families*, there has been very limited meaningful change. Systemic issues and many socioeconomic factors including the legacy of the residential school system and the Sixties Scoop, differing worldviews about family and responsibility for children, and distrust between Indigenous people and government factors have had an impact. The result is that Indigenous families and children have not been effectively served by the system that is supposed to see to their safety and well-being.

LAA will do its part by implementing a child welfare panel to ensure the lawyers taking child welfare certificates have experience, cultural competency and are to have knowledge of relevant the child welfare legislation provincially and federally and locally (where appropriate) and can provide high quality representation to individuals involved in the child welfare system.

Core Competencies:

Any LAA roster lawyer who has been practicing child welfare law in Alberta for a minimum of two years is eligible to apply to join this child protection panel. Lawyers who do not have two years of experience in practicing child welfare law may apply but will be required to have a designated mentor who has extensive experience practicing in the area of child welfare in Alberta and is prepared to support and mentor the lawyer on child welfare files. In addition, those lawyers with less than two years of experience will be encouraged to make best efforts to shadow an experienced child welfare lawyer in a Permanent Guardianship Order ("PGO") trial prior to running a PGO trial.

Applicants must demonstrate the following competencies:

- 1. Significant knowledge of and experience in child welfare proceedings under *Child, Youth Family Enhancement Act* (hereinafter referred to as “CYFEA”), the CYFEA Regulations and Children Services Enhancement Act Policy Manual. In addition, counsel must have a good understanding of the interplay between CYFEA and the *Family Law Act* as it relates to private guardianship, guardianship and other parenting arrangements. A strong knowledge of the rules of evidence is necessary as they relate to running a child welfare trial. Counsel should have experience in conducting all aspects of a child welfare file from running initial custody hearings, negotiating resolutions to conducting a child welfare trial.** Some ways lawyers may demonstrate the competency include: (a) by describing how much of the lawyer’s practice is devoted to family law, (b) by describing how much of the lawyer’s practice is devoted to representing parents or children in child protection matters, (c) by summarizing how many child welfare files, including the number of trials the lawyer has conducted over the previous five years, and (d) by listing any training seminars or other continuing legal education the lawyer has undertaken in relation to child welfare law.
- 2. Specific training and experience in representation of Indigenous individuals in the child protection matters. Applicants must demonstrate an appreciation of the challenges faced by Indigenous individuals in the child protection and criminal justice system. Lawyers must have a deep understanding of the issues faced by Indigenous peoples and the continuing impacts that Colonialism plays in their families’ lives. *An Act Respecting First Nations, Inuit and Metis Children, Youth and Families Act, the United Nation Declaration on the Rights of Indigenous People, the Truth and Reconciliation Commission’s Recommendations, the Missing and Murdered Indigenous Women and Girls Inquiry’s Call to Justice and the Office of the Child and Youth Advocate Special Report on the Overrepresentation of Indigenous children in the Child welfare system in Alberta are required reading.*** Some ways lawyers may demonstrate this competency include: (a) by listing training seminars or other continuing legal education the lawyer has undertaken in relation to cultural competency, (b) by estimating how many child welfare files they have handled over the past five years where their clients have been Indigenous and they have made arguments regarding these sources, (c) by describing some serious, interesting, or reported child welfare cases the lawyer has been involved in or (d) any other related work they have done to promote the indigenous families interests in child protection proceedings.
- 3. Strong communication, problem solving, conflict management, resolution focused and negotiation skills in working with families involved in the child welfare system.** This includes, for example, interest or experience working with families from Indigenous and marginalized communities, newcomers to Canada, families who are experiencing domestic violence, poverty, addiction, in addition to family breakdown. Experience in working with and

managing the expectations of parents with mental health and addictions is required. In addition, familiarity with the agencies and programs that serve families involved in the child welfare system would be an asset. Some ways lawyers may demonstrate this competency include: (a) by listing training seminars or other continuing legal education the lawyer has undertaken in relation to negotiations, mediation, or collaborative law or any of the issues listed above that may cause parents to come into contact with Children's Services, and (b) by demonstrating your knowledge of the key resources available to assist child welfare families in your geographic area of practice.

4. **A Commitment to Training and Continuing Legal Education in the specific area of child protection.** Child Welfare Panel lawyers are expected to seek out continuing legal education opportunities relevant to the competencies listed above and complete at least 6 hours per year of professional continuing education in the area of child protection.

This may include a combination of:

- Attending training sessions, seminars, or webinars offered by LAA's staff or roster lawyers or others in the area of child protection.
- Attending training on child protection offered by a recognized organization or associations including but not limited to Legal Education Society of Alberta ("LESA"), Legal Representation of Children and Youth ("LRCY"), Association of Family and Conciliation Courts ("AFCC"), Canadian Bar Association ("CBA"), National Family Law Conference Wahkohtowin Lodge, University of Alberta Faculty of Law or other private training that may be offered from time to time.
- Reading treatises, academic papers and caselaw relevant to child protection.
- Undertaking cultural competency training or other training that helps the lawyer gain a greater understanding of the challenges facing Indigenous children and families.

Lawyers do require direct or extensive experience in the areas listed above, but if a lawyer lacks directly relevant experience in an area, the lawyer should have a plan for maintaining those competencies while a member of the panel. In addition, the lawyer must be committed to attend any training on child welfare offered by LAA and be prepared to participate in mentorship opportunities and/ or file reviews.

- **Disclaimer: This document is current as of November 29, 2022. LAA Tariff, Administrative Policies and process are subject to change.**